

IN THE IOWA DISTRICT COURT FOR IDA COUNTY

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STATE OF IOWA, ex rel., IOWA	)	LAW NO. _____
DEPARTMENT OF NATURAL	)	
RESOURCES (99AG23542),	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PETITION AT LAW
	)	
TRAVIS ALDAG,	)	
	)	
Defendant.	)	

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COMES NOW the Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (hereafter DNR) and for its claim against Defendant Travis Aldag (hereafter Aldag) states as follows:

**INTRODUCTION**

1. All animal feeding operations, except small animal feeding operations, must file a manure management plan that meets environmental requirements. Manure management plans protect the environment by insuring that an operation has adequate land available for the application of the manure nutrients. Adequate land, in turn, insures that the manure is not over applied and thereby avoids manure runoff into the waters of the State.

Although the vast majority of feeding operations comply with manure management plan requirements, a few operators have failed to file manure management plans. Defendant Travis Aldag has failed to submit a manure management plan for his hog confinement facility in Ida County. As a result, Aldag applied manure without an approved manure management plan in place. Further, Aldag failed to remove manure from an abandoned confinement building and failed to properly dispose of dead livestock. The State of Iowa now seeks civil penalties,

issuance of a permanent injunction, and collection of an administrative penalty against Aldag for these violations.

### **PARTIES**

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant Travis Aldag resides at 3274 Orchard Avenue, Ida Grove, Ida County, Iowa.

### **JURISDICTION**

5. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

6. The owner of a confinement feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

7. All persons required to submit a manure management plan to the department shall also pay to the department an indemnity fee except those operations constructed prior to May 31, 1985, which were not required to have a construction permit. Iowa Code § 459.503; 567 Iowa Admin. Code 65.16(6). Any person submitting an original manure management plan must also pay to the department a manure management plan filing fee of \$250.00, which shall be included

with each original manure management plan being submitted. Iowa Code § 459.316(1)(b); 567 Iowa Admin. Code 65.16(7).

8. Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required, until the DNR has approved the manure management plan. Iowa Code § 459.312(5); 567 Iowa Admin. Code 65.16(5).

9. The owner of a confinement feeding operation shall remove all manure from related confinement feeding operation structures used to store manure by a date specified in an order issued to the operation by the department or six months following the date that the operation is discontinued, whichever is earlier. Iowa Code § 459.311(4); 567 Iowa Admin. Code 65.2(8).

10. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I, unless otherwise provided. Iowa Code § 459.103(3).

11. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

12. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

13. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (hereafter EPC), institute any legal proceedings,

including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

14. The Attorney General is authorized under Iowa Code section 455B.109(3), on request of the DNR, to institute summary proceedings to recover the penalty and any accrued interest at the rate of one and one-half percent (1.5%) per month or part of a month on the unpaid balance where a penalty had been assessed by the DNR in a final administrative order but remains unpaid.

15. The EPC shall establish rules governing the handling and disposal of solid waste. Pursuant to section 455B.303, the EPC has adopted chapters 567 Iowa Admin. Code 100-121. Iowa Code § 455B.304.

16. Dumping or depositing or permitting the dumping or depositing of solid waste at any place other than a facility permitted by the department is prohibited unless otherwise provided by permit or rule. Iowa Code § 455B.307(1); 567 Iowa Admin. Code 101.3.

17. Dead farm animals are exempt from the prohibition against dumping or depositing of solid waste at any place other than a permitted sanitary disposal project, provided that the dead animals are immediately covered by a minimum of six inches of soil and finally covered with a minimum 30 inches of soil. 567 Iowa Admin. Code 101.3(1)“b”.

18. A person who violates any provision of Iowa Code chapter 455B, part 1, division IV or any rule or any order adopted or the conditions of any permit or order issued thereunder shall be subject to a civil penalty, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.307(3).

19. The Attorney General is authorized, at the request of the DNR, to initiate any legal proceedings necessary in obtaining compliance with an order of the commission or the director or prosecuting any person for a violation of the provisions of Iowa Code chapter 455B, part 1, division IV or rules issued thereunder. Iowa Code 455B.307(2).

### **FACTS**

20. On July 18, 2005, the EPC voted to refer the matters described in paragraphs twenty-one (21) through twenty-six (26) below to the Attorney General for purposes of initiating judicial enforcement against this defendant.

21. Defendant Travis Aldag owns and operates a confinement feeding operation for swine located in Section 27, Hayes Township, Ida County, Iowa. The facility consists of two (2) buildings with a total animal unit capacity of 640. Manure is stored in concrete below-building pits.

22. On May 11, 2004, DNR officials conducted an inspection at the defendant's facility. DNR officials discovered that the two (2) buildings were recently constructed, and had an animal unit capacity of 640. The defendant had not submitted a manure management plan and had not paid any of the applicable fees. DNR officials also observed a pile of dead hogs in various stages of decay, and an abandoned building to the north of the two (2) useable buildings. The below-building pit in the abandoned building was completely full of manure.

23. On June 9, 2004, the director of the DNR issued Administrative Order No. 2004-AFO-55 to the defendant, a copy of which is attached, marked as Exhibit A and incorporated by reference. The Order required the defendant to submit a complete manure management plan and fees within 45 days of receipt of the Order. The Order further required the defendant to properly

dispose of dead hogs at his facility, and to remove the manure from the pit at the abandoned building and have it properly land applied immediately. Administrative Order No. 2004-AFO-55 also assessed an administrative penalty of Three Thousand Dollars (\$3,000.00), pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10.1 - 10.3. The defendant received a copy of the Order on June 18, 2004, as shown by the return receipt, a copy of which is attached, marked as Exhibit B and incorporated by reference. The defendant did not appeal the Order.

24. On November 3, 2004 the defendant submitted a manure management plan to the DNR. The plan did not include conservation plans for HEL land, a county verification form, and a description of the lands where manure would be applied. On November 16, 2004, the DNR rejected the manure management plan, and gave the defendant until December 20, 2004 to submit the required information. The defendant did not submit any further information. The defendant has also failed to pay the applicable fees, and has continued to land apply manure without an approved manure management plan.

25. On August 25, 2005 DNR officials conducted an inspection at the defendant's facility. DNR officials again observed dead hog remains in the vicinity of the two (2) occupied buildings. Manure had not been removed from the pit beneath the unused building.

26. The defendant has failed to pay the administrative penalty referenced in paragraph twenty-three (23).

### **VIOLATIONS**

27. The defendant has failed to submit an approvable manure management plan and applicable fees in violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.316(1)(b),

459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(6), 65.16(7), and Administrative Order No. 2004-AFO-55.

28. The defendant has continued to land apply manure without an approved manure management plan in violation of Iowa Code section 459.312(5) and 567 Iowa Admin. Code 65.16(5).

29. On and before August 25, 2005, the defendant dumped or deposited or permitted the dumping or depositing of dead hogs at his confinement feeding operation, an unapproved site, in violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 101.3, and Administrative Order No. 2004-AFO- 55.

30. The defendant has failed to remove manure from an abandoned confinement facility within six (6) months following the date that the operation is discontinued in violation of Iowa Code section 459.311(4), 567 Iowa Admin. Code 65.2(8), and 2004-AFO-55.

31. The defendant has failed to pay the administrative penalty referenced in paragraph twenty-three (23), even though the time for payment has passed, or any accrued interest in violation of Administrative Order No. 2004-AFO-55.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant Travis Aldag, pursuant to Iowa Code section 455B.191(1), for each day of violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503, 459.311(4); 567 Iowa Admin. Code 65.2(8), 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6), 65.16(7); and Administrative Order No. 2004-AFO-55 not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

b. assess a civil penalty against Defendant Travis Aldag, pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 101.3 not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

c. issue a permanent injunction ordering Defendant Travis Aldag to submit an approvable manure management plan and pay the applicable fees, and further enjoining Defendant Travis Aldag from any violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503, 459.311(4), 455B.307(1); 567 Iowa Admin. Code 65.2(8), 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6) 65.16(7), 101.3; and Administrative Order No. 2004-AFO-55; and

d. order that the Defendant Travis Aldag pay the administrative penalty assessed in Administrative Order No. 2004-AFO-55 and accrued interest, pursuant to Iowa Code section 455B.109(3).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

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ATTORNEYS FOR PLAINTIFF

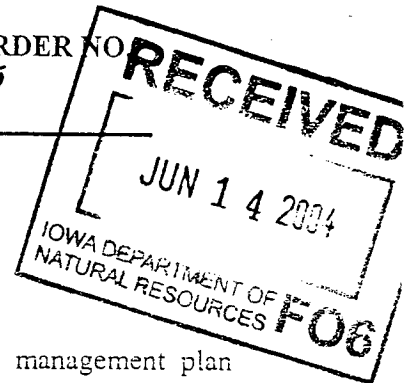


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IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER

IN THE MATTER OF:  
Travis Aldag - ID#62966  
Section 27, Hayes Township  
Ida County, Iowa

ADMINISTRATIVE ORDER NO  
2004-AFO- 55



TO: Travis Aldag  
3274 Orchard Ave.  
Ida Grove, IA 51445


- VIOLATIONS:**
1. 567 IAC 65.16(1)"b". You failed to submit a manure management plan (MMP) to the department.
  2. Iowa Code §455B.307(1) and 567 IAC 100.4(2)"b". You failed to dispose of your dead hogs within 24 hours of death by burying, incinerating, composting, or rendering pick up.
  3. 567 IAC 65.2(8). You failed to remove all the manure from you pit within six months of discontinuing an animal feeding facility.

**ORDER:** You shall submit your complete MMP and fee within 45 days of your receipt of this Order. You are also required to properly dispose of the dead hogs at your facility and to remove the manure from the pit and have it properly land applied immediately. In addition, a penalty of \$3,000 is assessed effective 30 days from your receipt of this Order, and shall be paid to the department within 60 days of receipt of this order, unless you appeal as provided below. \$1,000.00 of this amount is based on economic benefit for avoiding past fees and costs of complying with MMP, disposal, and manure management requirements. \$1,000.00 of this amount is based on the gravity of the violation, considering the size of this facility, agency costs in addressing this violation, and the importance of the animal feeding operation program. \$1,000.00 of this amount is for culpability; the MMP requirements have been widely publicized in the industry and ample time for compliance was allowed. Additionally, you have had ample time to remove the dead hogs and empty the pits.

**AUTHORITY:** Iowa Code §455B.109, §459.103(3), 567 IAC 10.3, 65.16(1)"b", 567 IAC 100.4(2)"b", 567 IAC 65.2(8).

**APPEAL:** Iowa Code §455B.109, 561 IAC 7.5(1) A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Kelli Book at (515) 281-8563 for more information regarding appeal procedures and resolution of this Order.

**NONCOMPLIANCE:** If you fail to comply with this Order you may be subject to further penalties pursuant to Iowa Code §455B.109 or penalties and injunction pursuant to Iowa Code §455B.191 and §459.603.

  
JEFFREY R. VONK, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES  
Wallace State Office Building, 502 East Ninth Street; Des Moines, Iowa 50319

Dated this 9 day of

June, 2004

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

TRAVIS ALDAG  
3274 ORCHARD AVENUE  
IDA GROVE IA 51445

4a Article Number  
7003 1680 0000 3172 6231

4b. Service Type

- ☐ Registered ☒ Certified  
☐ Express Mail ☐ Insured  
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

6-18-04

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

X *[Signature]*

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.